

United States Environmental Protection Agency

Region III

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In the Matter of:

Metro Container Corporation Site

BP America Inc., Chevron Corp.,  
Mobil Corp., Sun Refining and Marketing  
Co., and E.I. du Pont de Nemours & Co.

Respondents

Proceeding under Section 106(a)  
of the Comprehensive Environmental  
Response, Compensation, and Liability Act  
of 1980 (42 U.S.C. § 9606(a),  
as amended by the Superfund Amendments  
and Reauthorization Act of 1986, Pub. L.  
No. 99-449, 100 Stat. 1613 (1986)).



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Docket No: III-89-11-DC

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ADMINISTRATIVE ORDER ON CONSENT

The following Administrative Order on Consent ("Order") by and between the United States Environmental Protection Agency ("EPA") and BP Oil Co., Chevron Oil Co., Mobil Oil Co., Sun Oil Co., and E.I. du Pont de Nemours & Co. ("Respondents") is issued pursuant to the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 19 (1987), and further delegated to the Regional Administrators of EPA. This Order pertains to a property more particularly described below, located in Trainer, Delaware County, Pennsylvania.

The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. § 300.65. Notice of the issuance of this Order has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

I. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate, and/or eliminate the release

or threat of release of hazardous substances at the Metro  
Container Corporation Site ("Site").

The specific purpose of this Order is to control access  
to the Site, prevent further releases of hazardous substances,  
and prevent further surface migration of hazardous substances  
into Stoney Creek. All parties anticipate that removal  
activities beyond the scope of this Order may be necessary  
and may be the subject of future negotiations.

## II. FINDINGS OF FACT

EPA has determined that:

1. The Metro Container Corporation ("Metro") Site,  
shown in Attachment 1, is located at West Second Street and  
Price Road in Trainer, Delaware County, Pennsylvania. Metro  
Container Corporation is a Delaware corporation doing business  
in the Commonwealth of Pennsylvania.
2. The Site, located in an industrial area, is bounded  
by an oil refinery to the west and a scrap yard to the east  
with railroad lines and the Delaware River to the south and  
residences to the north. Stoney Creek, a tributary to the  
Delaware River, borders the western edge of the Site.
3. The Site has been used for approximately 20 years as  
a recycling and reclaiming facility for used drums. Metro  
became the owner and operator of the Site on February 11, 1983.
4. During the course of operations, sludge was generated  
and accumulated at the Site in a concrete basin and in  
numerous used 55-gallon drums. Analysis of the sludge by  
EPA has revealed elevated levels of various metals and  
organic compounds.
5. On December 7, 1987, Metro Container Corporation filed

for bankruptcy under Chapter 11 of the Bankruptcy Code.

The company ceased operations at the Site on December 11, 1987.

6. EPA employees and contractors conducted an inspection of the Site on December 11, 1987. The inspection revealed an open cement lagoon containing waste sludge, numerous 55-gallon drums of waste sludge, and approximately 60,000 unreclaimed drums. The lagoon was filled beyond capacity and was on the verge of overtopping its banks. Visual evidence was present that the lagoon had, in the past, overtopped its banks. Many of the drums containing sludge were in poor condition, were uncovered, and appeared partially filled with rainwater. Sludge was also present on the ground in the vicinity of the sludge storage drums.

7. Samples were taken during the December 11, 1987, inspection. The sample locations are shown on the map in Appendix 1 which is attached hereto and made a part hereof. The results of the sampling are shown in the tables in Appendix 2 which are attached hereto and made a part hereof.

8. The substances listed in Appendix 2 are hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

9. The toxicological effects of the hazardous substances listed in Appendix 2 are presented in Appendix 3, attached hereto and made a part hereof.

10. Approximately 500 people live within a quarter mile of the Site. Potential routes of exposure to the hazardous substances identified in Appendix 2 include dermal contact, ingestion, or inhalation.

11. The Respondents are all corporations doing business in the Commonwealth of Pennsylvania who have each arranged

for the disposal at the Site of residues of hazardous substances contained in "RCRA empty" drums (40 C.F.R. Section 261.7).

### III. CONCLUSIONS OF LAW

12. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Each Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. Hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site and are currently present there.

15. The past, present, and/or potential migration of hazardous substances at and/or from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

16. Respondents and others are liable as responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

### IV. DETERMINATIONS

17. Based upon the Findings of Fact and Conclusions of Law, the EPA Regional Administrator for Region III has determined that there may be an imminent and substantial endangerment to the public health, welfare, or the environment as a result of the release or threat of release of hazardous substances at and/or from the Site.

18. The Regional Administrator has determined that the actions set forth below are necessary to protect public health and welfare and the environment.

### V. PARTIES BOUND

19. This Consent Order shall apply to and be binding upon

Respondents and their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for the Respondents, or any combination thereof.

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20. The undersigned representative of each Respondent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute this Consent Order, and to bind legally such party to this Consent Order.

21. No change in ownership or corporate or partnership status relating to any Respondent will in any way alter the status of the Respondents or their responsibilities under this Consent Order.

22. The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order and shall condition such contracts upon compliance with the requirements of this Consent Order. Respondents shall provide appropriate oversight to ensure such compliance.

23. In the event of the refusal, or inability to comply with all the terms and conditions of this Consent Order, or insolvency of any one or more of the Respondents, whether or not such Respondent(s) enters into formal bankruptcy proceedings, or if for any other reason one or more of the Respondents do not comply with any term or condition of this Consent Order, the remaining Respondents shall be obligated to the United States to complete full implementation of any and all remaining terms and conditions of this Order.

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as Appendix 4;

b. contains a site safety program which is sufficient to minimize the potential for exposure of personnel and the public to hazardous substances during performance of the work specified therein;

c. contains a schedule for the implementation of all tasks specified in the Work Plan. This schedule shall not exceed 180 days after approval of the Work Plan for the achievement of the above objectives; and

d. provides for EPA to receive notice at least 72 hours prior to the commencement of any tasks identified in the Work Plan.

27. EPA shall review the Work Plan submitted pursuant to paragraph 26. If EPA approves the Work Plan, Respondents shall begin implementation of the Work Plan in accordance with the requirements and schedules therein within 5 days of notification by EPA of its approval of the contractor who will implement the Work Plan. If EPA disapproves or conditionally approves the Work Plan, EPA will specify the deficiencies or conditions in writing. Respondents shall, within 7 days following receipt of a conditional approval, modify the Work Plan to satisfy the conditions and begin implementing the Work Plan as modified. Respondents shall, within 7 days following receipt of a disapproval, modify the Work Plan to remedy the specified deficiencies and resubmit the Plan to EPA. In the event of disapproval of the revised Work Plan, EPA retains the right to submit its own plan to the Respondents and to require the Respondents to perform the tasks set forth therein, or to perform the work itself and to seek to recover costs from the

Respondents for such work pursuant to Section 107 of CERCLA,  
42 U.S.C. § 9607.

28. Respondents shall submit progress reports to EPA on a regular schedule which shall be specified in the Work Plan and shall provide the dates that each task was initiated and completed, as well as all information developed and sample results obtained. Respondents shall provide any available information related to the Site cleanup specifically requested by EPA within 3 business days of receipt of the request. Within 45 days after completing the work required by this Order, the Respondents shall submit to EPA a final report detailing activities completed and data gathered.

29. Respondents and EPA or their designees shall arrange a final inspection of the Site following completion of the measures described above to verify compliance with the requirements of this Order. EPA shall subsequently notify the Respondents of its determination of satisfactory compliance with the terms of the Order, or in the event that EPA determines that compliance is not satisfactory, EPA shall specify the deficiencies and the actions required to correct such deficiencies. The Respondents will undertake and complete the actions required to correct such deficiencies within fourteen (14) days of receipt of EPA's notice of disapproval.

30. Respondents shall comply with all applicable Federal, State, and local government statutes, regulations, and ordinances when carrying out activities pursuant to this Order.

31. All work must be performed in accordance with the Occupational Safety and Health Administration's rules and regulations governing hazardous waste operations, 29 C.F.R. Part 1910.

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VII. DESIGNATED PROJECT OFFICERS

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32. On or before the effective date of this Consent Order, EPA and Respondents shall each designate a Project Officer ("PO"). Each PO shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between the Respondents and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Officers. EPA and the Respondents each have the right to change their respective PO. Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change. The EPA PO's authority shall include the authority to halt, modify, conduct, or direct any tasks required by this Consent Order or portions thereof or to take any response actions when conditions present an immediate risk to public health or welfare or the environment as described in 40 C.F.R. § 300.65. The PO's actions shall, at all times, be controlled by the guidance and authority of the National Contingency Plan, 40 C.F.R. Part 300. The PO for EPA shall be:

Lawrence Falkin, Compliance Officer  
United States Environmental Protection Agency  
CERCLA Removal Enforcement Section (3RC22)  
841 Chestnut Building  
Philadelphia, PA 19107  
Telephone: (215) 597-8981.

The absence of the EPA PO from the Site shall not be a cause for the stoppage of work.

#### VIII. SAMPLING AND ACCESS

33. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives of any samples collected by Respondents pursuant to the implementation of this Order. Respondents shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity.

34. In addition to its authority under Section 104 of CERCLA, 42 U.S.C. § 9604, EPA and its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such sampling and tests as EPA deems necessary; and verifying the data submitted to EPA by the Respondents. To the extent practicable, EPA shall coordinate its on-site activities with the Respondents' Project Officer. The Respondents shall permit EPA and its authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which in any way pertains to work undertaken pursuant to this Order, provided however, that nothing herein shall constitute a waiver of documents protected by the attorney-client privilege or the attorney work-product doctrine. EPA reserves such rights as it may have to seek access to such documents and if Respondents withhold such documents they shall provide to EPA an index of the documents withheld and a statement supporting the claim of privilege or workproduct.

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35. All parties with access to the Site pursuant to this paragraph shall comply with all EPA-approved health and safety plans.

36. To the extent that property included in the sampling and removal area is owned or controlled by parties other than the Respondents, the Respondents will use all reasonable efforts to obtain access agreements from the present owners and/or lessees, as appropriate, within twenty (20) days of the effective date of this Order. Such agreements shall provide reasonable access for EPA, Respondents, and their authorized representatives. In the event the Respondents cannot obtain such access agreements within the time designated above, Respondents shall so notify EPA no later than the close of the 20-day period.

IX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

37. The effective date of this Order shall be the date on which a fully executed copy is received by the Respondents.

38. This Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall become effective on the date on which a fully executed copy of such amendments are received by the Respondents. Minor changes to the Work Plan and the schedule contained therein may be made by mutual agreement of EPA's and Respondents' POs. Such changes shall become effective at the time of agreement and shall be confirmed by EPA within 5 days by letter.

39. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order, with the exception of site access agreements between the Respondents and third parties, are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved

reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondents to the requirements of Section XIII "Stipulated Penalties".

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40. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and other writing(s) submitted by the Respondents shall be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Order.

#### X. QUALITY ASSURANCE

41. The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R, "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/86, and "A Compendium of Superfund Field Operations Methods", December 1987, OSWER Directive 9355-0-14 while conducting all sample collection and analysis activities required by this Order. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan.

#### XI. FORCE MAJEURE

42. The Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with the requirements of this Order. Said notification shall be made verbally as soon as possible but not later than two (2) business days after the Respondents become aware of such delay or anticipated delay, and in writing not later than five (5)

calendar days after becoming aware of such delay or anticipated delay. The written notification shall state:

(a) the nature of the delay; (b) whether and the reason why the delay is beyond the control of the Respondents; (c) the action that has been and will be taken to mitigate, prevent or minimize further delay; (d) the anticipated length of the delay; and (e) a timetable for the action to mitigate, prevent or minimize the delay. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Any delay that results from circumstances beyond the control of the Respondents that cannot be overcome by due diligence shall not be deemed to be a violation of the Respondents' obligations under this Order, nor shall it make the Respondents liable for penalties pursuant to this Order resulting from such a delay. To the extent a delay is caused by circumstances beyond the control of the Respondents and cannot be overcome by due diligence, the schedule affected by the delay shall be modified to account for the delay resulting from such circumstances. Increased costs of performance or changed economic circumstances shall not be considered circumstances beyond the control of the Respondents.

Failure of the Respondents to comply with the notice requirements of this Section XI shall render this Section XI void and constitute a waiver of the Respondents' right to invoke the benefits of this Section XI with regard to such incident.

In the event that EPA and the Respondents cannot agree that any delay in compliance with the requirements of this Order has been or will be caused by circumstances beyond the reasonable control of the Respondents that cannot be overcome

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by due diligence, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" section, Section XII, of this Order. The Respondents shall have the burden of proving that the delay was caused by circumstances beyond their control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondents took all measures to avoid or minimize delay.

#### XII. DISPUTE RESOLUTION

43. If the Respondents object to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Order, the Respondents shall notify EPA in writing of their objection(s) within fourteen (14) days of receipt of such notification or action. EPA and the Respondents shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection from the Respondents to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a proposed written statement of its decision to the Respondents. Respondents shall then have 7 days to comment on EPA's proposed decision. After review of Respondents' comments, EPA shall issue a written statement of its decision to the Respondents.

#### XIII. STIPULATED PENALTIES

44. If the Respondents fail to perform any work or submit any reports set forth in the Work Plan, in the manner and in accordance with the schedule contained therein, the Respondents shall pay into the Hazardous Substances Superfund, within thirty (30) calendar days of receipt of written demand by

EPA, the sums set forth below as stipulated penalties.

Checks shall specifically reference "The Metro Container Corporation Site" and shall be made payable to the Hazardous Substances Superfund and shall be mailed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 360515M  
Pittsburgh, PA 15251

A copy of the check and transmittal letter shall be sent to the EPA PO and to the EPA Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Bldg., Philadelphia PA, 19107. Stipulated penalties shall accrue in the amount of \$1,000 per day for the first week or any portion thereof, \$2,000 per day for the next three (3) weeks thereafter or any portion thereof and \$5,000 per day for each week thereafter or any portion thereof during which a violation continues to occur. The stipulated penalties set forth in this Section XIII do not preclude EPA from pursuing any other remedies or sanctions available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Order. The collection of stipulated penalties for a violation shall be stayed during the pendency of any dispute resolution proceeding concerning such violation under Section XII hereof, except that said penalties shall continue to accrue during this period of time. Upon conclusion of the Dispute Resolution procedures set forth under Section XII, payment of all accrued stipulated penalties shall be due within fourteen (14) calendar days of Respondents' receipt of EPA's written decision.

45. In the event that EPA commences all or a portion of the removal action described by this Consent Order, Respondents

shall be released from any further obligation under this Consent Order to complete that portion of the removal action which EPA has commenced to perform. EPA's commencement of all or a portion of the removal action shall not relieve Respondents of any outstanding obligations to pay stipulated penalties for violations of this Consent Order. Stipulated penalties for violations of this Consent Order which have not been corrected as of the date of EPA's commencement of all or a portion of the removal action and which are uncorrectable because of EPA's commencement shall continue to accrue for a period not to exceed 60 days after EPA commences all or a portion of the removal action.

#### XIV. STATUTORY PENALTIES

46. The Respondents are advised that willful violation or failure or refusal to comply with this Order, or any portion hereof, may subject the Respondents to a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues, in accordance with Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Failure to comply with the Order, or any portion thereof, without sufficient cause, may also subject the Respondents to liability for punitive damages in an amount of up to three times the amount of any costs incurred by the "Fund", as defined in Section 101(11) of CERCLA, 42 U.S.C. § 9601(11), as a result of such failure to take proper action, in accordance with Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

#### XV. RESERVATION OF RIGHTS

47. Except as expressly provided in this Order, (1) each party reserves all rights and defenses it may have, and (2) nothing



herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and the imposition of statutory penalties. OFF ORIGINAL

48. As provided by this Order, EPA expressly reserves its right to disapprove of work performed by the Respondents and reserves its right to request that the Respondents perform response actions in addition to those required by this Order if it determines that such actions are necessary. In the event that the Respondents decline to perform such additional actions, EPA reserves the right to (a) order the Respondents to perform the additional work under Section 106 of CERCLA, 42 U.S.C. Section 9606, and (b) undertake such actions and seek reimbursement for costs incurred pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and seek reimbursement for any costs incurred pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

#### XVI. OTHER CLAIMS

49. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from

the Site.

50. Each Respondent hereby waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606.

51. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

#### XVII. CONSENT

52. The Respondents agree to undertake all actions required by the terms and conditions of this Order, but do not otherwise commit to undertake any other action hereby. The Respondents consent to and will not contest EPA jurisdiction regarding this Order.

53. Each Respondent agrees to pay its own costs and attorney's fees.

#### XVIII. REIMBURSEMENT OF PAST RESPONSE COSTS

54. For purposes of this Consent Order, the term "past response costs" shall mean all response costs incurred by EPA in connection with response activities relating to the Site pursuant CERCLA and the NCP as of the effective date of this Consent Order.

55. Within 90 days of the effective date of this Consent Order EPA shall submit to Respondents (a) an accounting of past response costs; (b) a count of all drums received at the Site during the period January 1, 1985 through and including December 31, 1987, and (c) a count of all drums received at the Site during the period January 1, 1985 through and including December 31, 1987 attributable to each Respondent. For purposes of this Consent Order each Respondent's "proportionate share" of past response costs shall be equal to the percentage of

drums attributable to such Respondent during the above mentioned period.

56. Within 90 days of Respondents' receipt of the information provided by EPA pursuant to paragraph 55 immediately above, Respondents shall reimburse EPA for past response costs in an amount equal to ten percent (10%) more than Respondents' total proportionate share.

57. Any Respondent executing this Order after the effective date of this Order as provided in Section XXIV hereof shall reimburse EPA for past response costs in an amount equal to ten percent (10%) more than its proportionate share. Any such Respondent shall reimburse EPA said amount within 60 days of its execution of this Consent Order.

58. In the event EPA is reimbursed for more than one hundred percent (100%) of past response costs excluding interest payments, the excess shall be applied to offset Respondents' cost reimbursement obligations set forth in Section XIX immediately below.

59. Payments made pursuant to this Section XVIII shall be made payable to the "Hazardous Substances Superfund", should specifically reference the "Metro Container Corporation Superfund Site" and should be addressed as specified in Section XIII of this Consent Order.

XIX. REIMBURSEMENT OF COSTS INCURRED WITH  
RESPECT TO THIS CONSENT ORDER

60. At the termination of this Consent Order, EPA shall submit to the Respondents an accounting of all response and oversight costs paid by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all

costs paid by EPA, its agents or contractors in connection with EPA's oversight of the work to be done by the Respondents under the terms of this Consent Order. The Respondents shall, within thirty (30) calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substances Superfund. Checks should specifically reference the Site and be addressed as specified in Section XIII of this Order.

XX. TERMINATION AND SATISFACTION

61. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that all of the terms of this Consent Order have been adequately completed to EPA's satisfaction. Such notice shall not be unreasonably withheld. Notice from EPA as provided in this Section shall constitute a finding that the work has been completed in a manner consistent with the NCP. EPA reserves its right to alter this finding based on information not available at the time this finding was made.

XXI. ADMISSIONS

62. Nothing in this Consent Order, including the Work Plan identified in Section VI hereof, is intended by the parties to be, nor shall it be, an admission of facts or law or determinations, an estoppel, or a waiver of defenses by the Respondents for any purpose, other than the enforcement of this Consent Order, and the Respondents specifically do not admit any matter of fact or law set forth herein including that the conditions at the Metro Container Corporation Site present an imminent and substantial endangerment to public health, welfare, or the environment, or that such conditions

constitute a release or threat of a release of hazardous substances. Participation in this Consent Order by the Respondents is not intended by the parties to be, and shall not be, an admission of any fact or opinion developed by the contractor in the completion of the work. The terms of this Consent Order, including the Work Plan, shall not be construed more or less favorably for or against any party hereto. This Consent Order shall not be admissible in any proceeding except to enforce the terms of this Order.

#### XXII. SUBORDINATION OF CLAIMS

63. Any claim which any Respondent may have against any person (other than any other Respondent) for contribution for monies paid to EPA pursuant to this Consent Order as reimbursement for past response costs (as defined herein) shall be subordinated to any claim which EPA may have against such other person for recovery of any such past response costs not paid or payable by Respondents pursuant to this Consent Order.

The term "past response costs" as used in this paragraph 63 shall mean all response costs incurred by EPA as of the effective date of this Consent Order in connection with the Metro Container Corporation Site.

#### XXIII. ADDITIONAL RESPONDENTS

64. The parties understand that this Order may be amended by the inclusion of additional Respondents after the effective date of this Consent Order. Such amendment shall be accomplished by submission of a signature page executed by the additional Respondent(s) and a representative of the original Respondents to the EPA representative listed

in paragraph 31 of Section VII of this Order, and shall become effective upon Respondent's receipt of a letter from EPA acknowledging receipt of the new signature page and a revised caption listing the additional Respondent(s).

65. Respondents included beyond the effective date of this Consent Order as provided by paragraph 64

immediately above shall become immediately subject to

all the terms and conditions of this Consent Order

including, but not limited to, the obligation to pay

for past response costs as provided by paragraph 57

of Section XVIII of this Order.

IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
STANLEY L. LASKOWSKI  
ACTING REGIONAL ADMINISTRATOR  
EPA, REGION III

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